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2013 NOV 13 PM 3:56

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15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 RACHEL HUNTER; REBECCA ED
HUNTER; and BONNIE
19 HUNTER, Individually and On
Behalf of All Others Similarly
20 Situated,

21 Plaintiffs,

22 v.

23 PIONEER CREDIT RECOVERY,
24 INC.,

25 Defendant.

Case No: CV 13 - 02090 RSW(DTBx)

CLASS ACTION

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.

JURY TRIAL DEMANDED

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1 INTRODUCTION

- 2 1. BONNIE HUNTER (“Bonnie Hunter”), REBECCA HUNTER (“Rebecca
3 Hunter”), and RACHEL HUNTER (“Rachel Hunter,” or jointly as
4 “Plaintiffs”) bring this Class Action Complaint for damages, injunctive
5 relief, and any other available legal or equitable remedies, resulting from the
6 illegal actions of PIONEER CREDIT RECOVERY, INC. (“Defendant”) in
7 negligently and/or intentionally contacting Plaintiffs on Plaintiffs’ cellular
8 telephones, in violation of the Telephone Consumer Protection Act, 47
9 U.S.C. § 227 et seq. (“TCPA”), thereby invading Plaintiffs’ privacy.
10 Plaintiffs allege as follows upon personal knowledge as to themselves and
11 their own acts and experiences, and, as to all other matters, upon information
12 and belief, including investigation conducted by their attorneys.
- 13 2. The TCPA was designed to prevent calls like the ones described within this
14 Complaint, and to protect the privacy of citizens like Plaintiffs.
15 “Voluminous consumer complaints about abuses of telephone technology –
16 for example, computerized calls dispatched to private homes – prompted
17 Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct.
18 740, 744 (2012).
- 19 3. In enacting the TCPA, Congress intended to give consumers a choice as to
20 how creditors and telemarketers may call them, and made specific findings
21 that “[t]echnologies that might allow consumers to avoid receiving such
22 calls are not universally available, are costly, are unlikely to be enforced, or
23 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, §
24 11. Toward this end, Congress found that:

25 [b]anning such *automated* or prerecorded telephone calls
26 to the home, except when the receiving party consents to
27 receiving the call or when such calls are necessary in an
28 emergency situation affecting the health and safety of the
consumer, is the only effective means of protecting

telephone consumers from this nuisance and privacy invasion.

Id. at § 12 (emphasis added); see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that *automated* or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. *See also, Mims*, 132 S. Ct. at 744 (emphasis added).
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of *automated dialers* and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012) (emphasis added).

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

7. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. § 1391(b) because Plaintiffs are residents of the County of San Bernardino, State of California and Defendant is subject

1 to personal jurisdiction in the County of San Bernardino, State of California
2 as Defendant conducts business there.

3 **PARTIES**

- 4 8. Plaintiffs are, and at all times mentioned herein were, citizens and residents
5 of the County of San Bernardino, State of California. Plaintiffs are, and at
6 all times mentioned herein were, “person[s]” as defined by 47 U.S.C. § 153
7 (39).
8 9. Plaintiffs are informed and believe, and thercon allege, that Defendant is,
9 and at all times mentioned herein was, a Delaware corporation whose
10 primary corporate address is in Arcade, New York.
11 10. Defendant is and at all times mentioned herein was, a corporation and is a
12 “person,” as defined by 47 U.S.C. § 153 (39).
13 11. Defendant is one of the leading debt collection agencies in the United States.

14 **FACTUAL ALLEGATIONS**

- 15 12. Beginning on or about June 24, 2013, Defendant or its agent/s contacted
16 Rebecca Hunter on her cellular telephone number ending in 8770 via an
17 automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. §
18 227(a)(1), and as prohibited by 47 U.S.C. § 227(b)(1)(A).
19 13. This ATDS has the capacity to store or produce telephone numbers to be
20 called, using a random or sequential number generator.
21 14. Defendant contacted Rebecca Hunter on her cellular telephone at least two
22 times between June 24, 2013, and June 27, 2013, each time leaving a live
23 voice message regarding an alleged debt owed by Patrick Hunter.
24 15. Beginning on or about June 26, 2013, Defendant or its agent/s contacted
25 Bonnie Hunter on her cellular telephone number ending in 7853 via an
26 ATDS as defined by 47 U.S.C. § 227(a)(1), and as prohibited by 47 U.S.C. §
27 227(b)(1)(A).
28

16. This ATDS has the capacity to store or produce telephone numbers to be
2 called, using a random or sequential number generator.
17. Defendant contacted Bonnie Hunter on her cellular telephone at least six
4 times between June 26, 2013, and July 8, 2013, each time leaving a live
5 voice message regarding an alleged debt owed by Patrick Hunter.
18. The live voice message Defendant left on Bonnie Hunter's voicemail on
7 June 28, 2013 was almost identical to the message Defendant left on
8 Rebecca Hunter's voicemail on June 24, 2013.
19. The message Defendant left on Bonnie Hunter's voicemail on July 1, 2013,
10 July 3, 2013, July 5, 2013, and July 8, 2013 were almost identical to the
11 voicemail Bonnie Hunter received on June 26, 2013.
20. Beginning on or about July 12, 2013, Defendant or its agent/s contacted
13 Rachel Hunter on her cellular telephone number ending in 3456 via an
14 ATDS as defined by 47 U.S.C. § 227(a)(1), and as prohibited by 47 U.S.C. §
15 227(b)(1)(A).
21. This ATDS has the capacity to store or produce telephone numbers to be
17 called, using a random or sequential number generator.
22. Defendant contacted Rachel Hunter on her cellular telephone at least two
19 times between July 12, 2013 and July 30, 2013 leaving a live voice message
20 each time regarding an alleged debt owed by Patrick Hunter.
23. The message Defendant left on Rachel Hunter's voicemail on July 29, 2013
25 was almost identical to the message Defendant left on Rachel Hunter's
26 voicemail on July 12, 2013.
27. These calls to Plaintiffs' cellular telephone numbers came from Defendant's
28 telephone number 855-202-6999.
28. At no time did Plaintiffs enter into a business relationship with Defendant.
29. At no time did Plaintiffs provide their cellular telephone numbers to
30 Defendant through any medium.

27. Upon information and belief, the purpose of these calls from Defendant or its agent/s was to collect an alleged debt owed by someone other than Plaintiffs.

28. The telephone numbers Defendant or its agent/s called were assigned to a cellular telephone service for which Plaintiffs incur a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

29. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

30. Plaintiffs did not provide Defendant prior express consent to receive calls to their cellular telephones utilizing an ATDS, pursuant to 47 U.S.C. § 227 (b)(1)(A).

31. These telephone calls by Defendant or its agent/s, violated 47 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated (the “Class”).

33. Plaintiffs represent, and are members of the Class, consisting of:

All persons within the United States who received any telephone call/s from Defendant or its agent/s and/or employee/s to said person's cellular telephone made through the use of any automatic telephone dialing system within the four years prior to the filling of the Complaint.

34. Defendant and its employees or agents are excluded from the Class.

Plaintiffs do not know the number of members in the Class, but believes the Class members number in the tens of thousands, if not more. This matter should therefore be certified as a Class action to assist in the expeditious litigation of this matter.

1 35. Plaintiffs and members of the Class were harmed by the acts of Defendant in
2 at least the following ways: Defendant, either directly or through its agents,
3 illegally contacted Plaintiffs and the Class members via their cellular
4 telephones by using an ATDS, thereby causing Plaintiffs and the Class
5 members to incur certain cellular telephone charges or reduce cellular
6 telephone time for which Plaintiffs and the Class members previously paid,
7 and invading the privacy of said Plaintiffs and the Class members. Plaintiffs
8 and the Class members were damaged thereby.

9 36. This suit seeks only damages and injunctive relief for recovery of economic
10 injury on behalf of the Class, and it expressly is not intended to request any
11 recovery for personal injury and claims related thereto. Plaintiffs reserve the
12 right to expand the Class definition to seek recovery on behalf of additional
13 persons as warranted as facts are learned in further investigation and
14 discovery.

15 37. The joinder of the Class members is impractical and the disposition of their
16 claims in the Class action will provide substantial benefits both to the parties
17 and to the court. The Class can be identified through Defendant's records or
18 Defendant's agents' records.

19 38. There is a well-defined community of interest in the questions of law and
20 fact involved affecting the parties to be represented. The questions of law
21 and fact to the Class predominate over questions which may affect
22 individual Class members, including the following:

- 23 a) Whether, within the four years prior to the filing of the Complaint,
24 Defendant or its agent/s placed any call to the Class (other than a
25 message made for emergency purposes or made with the prior express
26 consent of the called party) using any automatic dialing system to any
27 telephone number assigned to a cellular phone service;

- 1 b) Whether Plaintiffs and the Class members were damaged thereby, and
2 the extent of damages for such violation; and
3 c) Whether Defendant and its agent/s should be enjoined from engaging
4 in such conduct in the future.
- 5 39. As persons who received at least one autodialed call utilizing an ATDS
6 without Plaintiffs' prior express consent, Plaintiffs are asserting claims that
7 are typical of the Class. Plaintiffs will fairly and adequately represent and
8 protect the interests of the Class in that Plaintiffs have no interests
9 antagonistic to any member of the Class.
- 10 40. Plaintiffs and the members of the Class have all suffered irreparable harm as
11 a result of the Defendants' unlawful and wrongful conduct. Absent a class
12 action, the Class will continue to face the potential for irreparable harm. In
13 addition, these violations of law will be allowed to proceed without remedy
14 and Defendants will likely continue such illegal conduct. Because of the
15 size of the individual Class member's claims, few, if any, Class members
16 could afford to seek legal redress for the wrongs complained of herein.
- 17 41. Plaintiffs have retained counsel experienced in handling class action claims
18 and claims involving violations of the Telephone Consumer Protection Act.
- 19 42. A class action is a superior method for the fair and efficient adjudication of
20 this controversy. Class-wide damages are essential to induce Defendants to
21 comply with federal and California law. The interest of Class members in
22 individually controlling the prosecution of separate claims against
23 Defendants is small because the maximum statutory damages in an
24 individual action for violation of privacy are minimal. Management of these
25 claims is likely to present significantly fewer difficulties than those
26 presented in many class claims.

43. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

NEGLIGENCE VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

44. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

45. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

46. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiffs and the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

47. Plaintiffs and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE

TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

48. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

49. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

50. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiffs and the Class are entitled to an award of \$1,500.00 in

1 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
 2 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

3 51. Plaintiffs and the Class are also entitled to and seek injunctive relief
 4 prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiffs respectfully request the Court grant Plaintiffs and the Class
 7 members the following relief against Defendant:

8 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
 9 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 10 • As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
 11 Plaintiffs seek for themselves and each Class member \$500.00 in statutory
 12 damages, for each and every violation, pursuant to 47 U.S.C. §
 13 227(b)(3)(B).
- 14 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
 15 conduct in the future.
- 16 • Any other relief the Court may deem just and proper.

17 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF**
 18 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 19 • As a result of Defendant's knowing and/or willful violations of 47 U.S.C.
 20 § 227(b)(1), Plaintiffs seek for themselves and each Class member
 21 \$1,500.00 in statutory damages, for each and every violation, pursuant to
 22 47 U.S.C. § 227(b)(3)(B).
- 23 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
 24 conduct in the future.
- 25 • Any other relief the Court may deem just and proper.

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1 TRIAL BY JURY
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3 52. Pursuant to the seventh amendment to the Constitution of the United States
4 of America, Plaintiffs are entitled to, and demand, a trial by jury.
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6 Dated: November 12, 2013
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Respectfully submitted,
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9 **KAZEROUNI LAW GROUP, APC**
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